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9
10 **BEFORE THE**
11 **RESPIRATORY CARE BOARD**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

13 In the Matter of the Petition to Revoke Probation
Against:

14 JODY MICHELLE NIELSON (aka KIRK)

15 18990 Caballero Drive

16 Apple Valley, California 92308

17 Respiratory Care Practitioner License No. 23913

18 Respondent.

Case No. R-2101

**DEFAULT DECISION
AND ORDER**

[Government Code § 11520]

19 FINDINGS OF FACT

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21 1. On or about September 20, 2007, Complainant Stephanie Nunez, in her
22 official capacity as Executive Officer of the Respiratory Care Board of California, Department of
23 Consumer Affairs, State of California, filed Petition to Revoke Probation No. R-2101 against
24 Jody Michelle Nielson (aka Kirk) (Respondent) before the Respiratory Care Board (Board).

25 2. On or about October 14, 2004, the Board issued Respiratory Care
26 Practitioner License Number 23913 to Respondent. This license expired on June 30, 2007, and
27 has not been renewed.

28 3. On or about September 20, 2007, Andrea Pina, an employee of the

1 Complainant Agency, served by Certified and First Class Mail a copy of the Petition to Revoke
2 Probation, Statement to Respondent, Notice of Defense, Request for Discovery, and Government
3 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board
4 at 18990 Caballero Drive, Apple Valley, California 92308. A copy of the Petition to Revoke
5 Probation, the associated supplemental documents, and Declaration of Service are attached as
6 Exhibit A, and incorporated as if fully set forth herein.

7 4. The above-described service of the Petition to Revoke Probation was
8 effective as a matter of law pursuant to the provisions of Government Code section 11505,
9 subdivision (c).

10 5. On or about October 25, 2007, the documents served by Certified Mail
11 were returned to the Board by the U.S. Postal Service marked "Undeliverable as Addressed." A
12 copy of the postal returned documents are attached as Exhibit B, and are incorporated herein by
13 reference.

14 6. Government Code section 11506 states, in pertinent part:

15 "(a) Within 15 days after service of the accusation the respondent may file with
16 the agency a notice of defense. . . .

17 " . . .

18 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
19 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
20 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
21 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

22 7. Respondent failed to file a Notice of Defense within 15 days after service
23 upon her of the Petition to Revoke Probation, and therefore waived her right to a hearing on the
24 merits of Petition to Revoke Probation No. R-2101.

25 8. California Government Code section 11520 states, in pertinent part:

26 "(a) If the respondent either fails to file a notice of defense or to appear at the
27 hearing, the agency may take action based upon the respondent's express admissions or upon
28 other evidence and affidavits may be used as evidence without any notice to respondent."

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing, and based on Respondent's express admissions by way of default and the evidence before it, contained in Exhibit A, finds that the allegations, and each of them, in Petition to Revoke Probation No. R-2101 are true.

10. The Board further finds that pursuant to Business and Professions Code section 3753.5, the costs of investigation and enforcement of the case prayed for in the Petition to Revoke Probation total \$6,715.25 based on the Certification of Costs contained in Exhibit C.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Jody Michelle Nielson has subjected her Respiratory Care Practitioner License No. 23913 to discipline.

2. Service of the Petition to Revoke Probation and the related documents was proper and in accordance with the law.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board is authorized to revoke Respondent's Respiratory Care Practitioner License based upon her violations of probation. Respondent failed to comply with the biological fluid testing program, failed to submit all of her quarterly reports, and failed to pay her cost recovery and probation monitoring payments.

5. Respondent is hereby ordered to pay the above costs of investigation and enforcement of this action.

ORDER

1. Respiratory Care Practitioner License No. 23913, heretofore issued to Respondent Jody Michelle Nielson, is hereby revoked.

2. If Respondent ever files an application for relicensure or reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed.

1 3. Respondent is ordered to reimburse the Board the amount of \$6,715.25
2 for its investigative and enforcement costs. The filing of bankruptcy by Respondent shall not
3 relieve Respondent of her responsibility to reimburse the Board for its costs. Respondent's
4 Respiratory Care Practitioner License may not be renewed or reinstated unless all costs ordered
5 under Business and Professions Code section 3753.5 have been paid.

6 4. Pursuant to Government Code section 11520, subdivision (c), Respondent
7 may serve a written motion requesting that the Decision be vacated and stating the grounds relied
8 on within seven (7) days after service of the Decision on Respondent. The agency in its
9 discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in
10 the statute.

11 This Decision shall become effective on March 29, 2008.

12 It is so ORDERED February 26, 2008

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15 Original signed by:
16 LARRY L. RENNER, BS, RRT, RCP, RPFT
17 PRESIDENT, RESPIRATORY CARE BOARD
18 DEPARTMENT OF CONSUMER AFFAIRS
19 STATE OF CALIFORNIA
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23

24 Attachments:

25 Exhibit A: Petition to Revoke Probation No. R-2101, Associated Supplemental Documents,
 and Declaration of Service
26 Exhibit B: Postal Returned Documents
27 Exhibit C: Certification of Costs
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